



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 28, 1996

Mr. Charles E. Griffith, III
Deputy City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR96-0811

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 24086.

The City of Austin (the "city") has received a request for information relating to city safety audits, investigations, and complaints. Specifically, the requestor seeks the following three categories of information:

1. All documentation pertaining to a safety audit conducted by Risk Management at the Austin Convention Center;
2. The report/results of any safety audits, investigations, and/or complaints of health and safety concerns involving any and all City of Austin departments;
3. The report/results of a recent safety inspection of the parking lot for the Austin Convention Center which was conducted by an outside agency.

You advise us that information responsive to the third category does not exist. However, you have submitted representative samples of the remaining information to us

for review.¹ You claim that this information is not subject to the act. In the alternative, you claim that sections 552.101, 552.107, and 552.111 of the Government Code except the submitted information from required public disclosure.

In claiming that the submitted information is not subject to the act, you refer us to section 552.022(1), which specifically makes public "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body." You contend that the requested information is not subject to the act because it is not "a completed report," but merely "interim documentation." In Open Records Decision No. 321 (1982) at 2, this office determined that the fact that information has not yet been put into "final" form is not dispositive of whether it constitutes public information. The threshold question in each instance is whether material that is requested from a governmental body falls within the act's definition of "public information." *Id.* Section 552.021 of the Government Code defines public information and provides as follows:

(a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.021. The records submitted to us for review were clearly created "in connection with the transaction of official business," *i.e.*, in the course of the city's maintenance of city property. Accordingly, we conclude that the information submitted to us for review is public information subject to the act.

We next address your assertion that section 552.101 of the Government Code excepts some of the requested information from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that section 552.101 excepts information contained in Exhibit "D" that relates to the medical condition of city employees. Information must be withheld under section 552.101 if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Not all medically related information is protected by common-law privacy. Open Records Decision Nos. 478 (1987), 370 (1983). This office determines on a case-by-case basis whether common-law privacy protects medically related information.

We have examined the information contained in Exhibit "D." It relates to health problems affecting city employees in a specific city facility. We believe the public has a legitimate interest in knowing whether it exposes itself to physical harm when it enters a public facility. Accordingly, we need not determine whether the information contained in Exhibit "D" is intimate or embarrassing to conclude that common-law privacy does not protect it. However, one of the records contained in Exhibit "D" was prepared by a physician. The release of this record is governed by section 5.08(b) of the Medical Practice Act, V.T.C.S. article 4495b, which makes confidential "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." This record may be released only as provided by the Medical Practice Act. *See generally* Open Records Decision No. 598 (1991). The remaining information contained in Exhibit "D," however, may not be withheld from required public disclosure under section 552.101 of the Government Code.

You also claim that section 552.107 of the Government Code excepts some of the requested information from required public disclosure. Section 552.107 excepts information if:

- (1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas; or
- (2) a court by order has prohibited disclosure of the information.

In Open Records Decision No. 574 (1990), this office held that section 552.107 protected information that reveals client confidences to an attorney or that reveals the attorney's legal advice, but that section 552.107 did not protect purely factual information that does not represent client confidences. The protection extends to factual information or requests for legal advice communicated by the client to the attorney. *See* Open Records Decision No. 574 (1990).

We have examined the memorandum (Exhibit "B") for which you seek section 552.107 protection. An employee in the city's human resources department submitted the memorandum to a city attorney. In the memorandum, the employee communicates factual information to the attorney and requests legal advice. We conclude, therefore, that Exhibit "B" may be withheld from required public disclosure under section 552.107 of the Government Code.

Finally, we address your assertion of section 552.111 of the Government Code. Section 552.111 excepts information that constitutes an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) this office reexamined section 552.111 and held that it excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. Section 552.111 does not except purely factual information from disclosure. *Id.* at 5. You seek to withhold under section 552.111 various documents relating to the maintenance of city properties. Such information clearly relates to internal city administrative matters. Accordingly, we conclude that section 552.111 does not except the submitted information from required public disclosure. Except as noted above, the requested information must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/GCK/rho

Ref.: ID# 24086

Enclosures: Submitted documents

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(w/o enclosures)